McGohan Brabender

JULY 2018 COMPLIANCE UPDATE

PCORI FEE DUE

The PCORI fee is due the end of this month. The fee is assessed against all health plans. If you are sponsoring a fully insured health plan, the carrier pays the fees but passes the cost on to the employer through higher premiums. On the other hand, if you sponsor a self-funded health plan (including an HRA) then you have to report and pay the fee.

PCORI fee: Key action item

PCORI fee chart

The fee is reported on IRS Form 720 and is paid with IRS Form 720-V. The fee has to be reported and paid by July 31, 2018.

FORM 5500

The ERISA annual reporting requirements have been around for years. The rules regarding welfare benefit plans (i.e. health, life, disability, etc.) say you have to file an annual report (i.e. Form 5500) if there were at least 100 participants (i.e. employees) in the plan as of the first day of the plan year. You look at all the lines of coverage and use the highest number. So, for example, if there are 85 employees in the health and 115 employees in the Company paid life, you would need to file the forms since one of the lines of coverage has over 100 employees in it. The forms are due seven months after the close of the plan year. This means the 2017 Form 5500 for welfare plans maintained on a calendar year basis is due July 31, 2018.

Form 5500 requirements, exceptions

If the welfare benefit plan is considered “funded” then you have to file the forms regardless of the number of participants in the plan. A plan is considered “funded” if it is maintained in conjunction with a trust. Different filing rules apply to retirement plans like a 401(K) plan.

OBAMACARE REQUIREMENTS REMAIN

Clearly the Trump administration is hostile to the Affordable Care Act (aka Obamacare) and continues to take steps to weaken the statute. However, until the law is formally repealed, employers still need to comply with the rules.

[Three things you need to know now about ACA]

This article talks about three aspects of the law that employers need to be aware of and comply with. They are (1) the employer mandate (2) the reporting requirements (i.e. IRS Forms 1094 and 1095) and (3) the Cadillac tax, which keeps getting delayed but not repealed.

2019 EMPLOYER MANDATE PENALTIES SET TO INCREASE

The previous article says the employer mandate penalties remain in effect until formally repealed. Those numbers are adjusted for inflation.

[Employer mandate penalties increasing]

The government released the inflationary factors and the penalty amounts are set to increase dramatically in 2019 if the employer mandate is not repealed before the end of this year.

ASSOCIATION HEALTH PLANS

The Department of Labor issued the final rules governing Association Health Plans or AHPs. There has been a lot of press devoted to AHPs but I am not sure how well they will be received by the insurance companies.

[AHP rule allows for greater restrictions]

[AHP rule expands access]

AHPs sound good in theory and some smaller employers may find them attractive. However, it remains to be seen how mainstream small employers participate in the AHPs and how many major insurance carriers will want to be involved in AHPs.

RESPONDING TO EMPLOYER MANDATE PENALTY

The government is starting to send out letters requesting payment for the employer mandate penalty for the 2015 calendar year. The employer has thirty days to respond if the employer wishes to contest the penalty.

https://www.employeebenefitadviser.com/news/employers-respond-to-aca-penalty-letters

https://www.lexology.com/library/detail.aspx?g=2f20a280-f1b0-4535-9c8f-b9efcd83978b

We have worked with several clients contesting the penalty and our experience has been that the assessments have been incorrect. That is, the proposed penalty is wrong and the government is willing to reduce or abate the penalty. Therefore, it is critical that you review the IRS notice to ensure it is accurate. If it is not, you need to contest the amount immediately.

CONSIDERING A MERGER OR ACQUISITION – DON'T FORGET THE BENEFIT ISSUES

The economic climate seems to be getting better and perhaps you are thinking about acquiring another company or selling your company or at least a portion of your company. Obviously you will get the lawyers and accountants involved.

http://www.wagnerlawgroup.com/DealBreakingMAIssuesRelatedtoEmployeeBenefitPlansandExecutiveCompensation.htm

Just make sure they consider the employee benefit issues that could be involved. Employee benefits are becoming a larger part of the operating budget and you have to take that into account when considering any type of corporate transaction. This article touches on those issues.

HIPAA PHYSICAL SAFEGUARDS – THE OBVIOUS

HIPAA requires covered entities and business associates to secure PHI or protected health information. I cannot overstress how important it is to encrypt electronic PHI. However, we often overlook the obvious.

https://www.poynerspruill.com/Publications/OCR-Reminds-Us-about-a-Fundamental-Aspect-of--Physical-Security-for-PHI

For example, physically locking up papers with PHI on it or making sure computer screens are located where the general public cannot see the data is really just common sense but should not be overlooked.

HSAS FOR OLDER EMPLOYEES

Only "HSA Eligible Individuals" can make or receive HSA contributions. One of the requirements is that the person be covered under a high deductible health plan or HDHP.

http://benefitsbryancave.com/hsa-eligibility-for-retirement-age-individuals/

Another requirement is the person not have certain other types of health coverage including Medicare. This article talks about HSAs for older individuals. There is nothing new but this article does a nice job of laying out those rules impacting an older individual's ability to make and receive HSA contributions.

INDIVIDUAL MANDATE REPEAL AND ACA DOWNFALL

President Trump signed into law late last year legislation that repealed the individual mandate beginning January 1, 2019. The Affordable Care Act is kind of like a three-legged stool. First, there is the employer mandate (2) the health care exchanges or marketplaces and (3) the individual mandate.

https://www.sheppardhealthlaw.com/2018/06/articles/affordable-care-act-aca/twenty-states-challenge-tcja/

Now that the individual mandate is going away in 2019, twenty states have filed a lawsuit saying the entire statute is now unconstitutional. In an unusual (but not unprecedented) move, the Trump administration has indicated it will not defend the statute. That is, the Department of Justice has stated it will not defend the Affordable Care Act in the lawsuit. Note that several states have entered the lawsuit and will, in fact, defend the statute. So the lawsuit will continue even though the Federal government will not defend the statute.

FMLA TAX CREDIT

President Clinton signed the Family Medical Leave Act saying larger employers have to grant certain employees up to 12 weeks of **unpaid** leave under certain circumstances. The Tax Cuts and Job Act provides a temporary tax credit **IF** the employer pays the employee during the leave.

https://www.mwe.com/en/thought-leadership/publications/2018/06/irs-releases-faqs-paid-family-medical-leave-credit

Again, the employer need not pay the employee during the FMLA but if the employer elects to do so then the employer can get a tax credit. Note the credit only is available this year and next.